

DIVISION I

OLLY NEAL, Judge

ARKANSAS COURT OF APPEALS

NOT DESIGNATED FOR PUBLICATION

CA05-1252

May 10, 2006

LINDA SMART

APPELLANT

v.

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F205244]

ST. VINCENT HEALTH SERVICES,
PREFERRED PROFESSIONAL
INSURANCE, SECOND INJURY
FUND, THE RAWLINGS COMPANY

APPELLEES

AFFIRMED

Appellant Linda Smart appeals from a decision of the Arkansas Workers' Compensation Commission (Commission) that reversed the administrative law judge's (ALJ) award of benefits. On appeal, appellant raises the following argument:

There is no substantial evidence to support the Commission's reversal of the administrative law judge's decision denying and dismissing the claim in its entirety with reference to the following:

1. Failure to assess an attorney's fee to the appellant's attorney in spite of a stipulation thereto.
2. Compensability of the appellant's SI joint problem and its causal connection between the compensable fall of April 25, 2002.
3. 5% impairment rating assessed by Dr. James Adametz for the additional damage to the appellant's cervical spine.

We affirm.

The facts of this case are as follows. Appellant worked in the print production

department for appellee St. Vincent Health Services. On April 25, 2002, appellant allegedly sustained injuries to her neck, hip, and left leg from a fall she sustained when she tripped over some boxes. Appellant initially sought treatment for her alleged neck injury at St. Vincent Family Clinic (Clinic). She was eventually referred to Dr. James Adametz, who had treated appellant for prior neck injuries.

Appellees initially accepted appellant's claim for benefits stemming from her neck injury as compensable. Appellant was paid temporary-total-disability benefits through September 6, 2002, when appellees, believing that appellant had reached maximum-medical-improvement (MMI), ceased paying temporary-total-disability benefits.

On September 23, 2002, Dr. Adametz performed an anterior discectomy on appellant's cervical spine. Afterwards, appellant filed a claim seeking a resumption of her benefits. A hearing on her claim was scheduled for sometime in April 2003; however, prior to the hearing, appellees agreed to reinstate appellant's temporary-total-disability benefits. Appellees agreed to pay said benefits from September 6, 2002, up until appellant reached MMI. From October 21, 2002, through September 3, 2003, appellees paid appellant benefits. Sometime thereafter, Dr. Adametz found that appellant had reached MMI and assigned appellant a five percent impairment rating. Dr. Adametz also referred appellant back to the clinic for treatment of her SI joint problems. Appellant was eventually referred to Dr. Wesley Brent Sprinkle, a neurologist.

Appellees refused to pay for the treatment provided by Dr. Sprinkle. As a result,

appellant filed a claim alleging the following: (1) On April 25, 2002, in addition to sustaining a neck injury, she also sustained a compensable injury to her low back for which she was entitled to benefits; (2) She was entitled to additional benefits for temporary-total-disability from September 3, 2002, until October 20, 2002, and for the period of July 2003 until a date yet to be determined; (3) She was entitled to an attorney's fee on all temporary-total-disability benefits payable from September 3, 2002, until July 2003.

At the hearing before the ALJ, the appellees acknowledged that they owed an attorney's fee for temporary-total-disability benefits for the period including October 21, 2002, through September 6, 2003. During the hearing the following testimony was heard.

Appellant testified that Dr. Adametz performed her neck surgery on September 23, 2002. She said that, from September 9, 2002, through October 20, 2002, she was unable to work. She said that, in April 2003, Dr. Adametz found that she had reached MMI for her neck injury and referred her back to Dr. Ralph Joseph, III, a physician at the clinic, for treatment of her SI joint problems. Appellant explained that she has numbness and tingling in the joint area of her hip. She said that she also has some problems with incontinence and the inability to feel when she needs to go to the restroom. Appellant admitted that these problems existed prior to her April 25 fall, but said that, before April 25, she did not have lower back problems. However, appellant later testified that, in the past, Dr. Adametz had treated her for lower back problems. Appellant testified that she was referred to Dr. Sprinkle for treatment of her SI joint problems and that she was still under his care. She said that

following a nerve assessment, Dr. Sprinkle diagnosed her as having slight nerve loss on her left side.

During her testimony, appellant explained that, before the April 25 fall, when she would sit and work for long periods, her back would hurt from sitting too long. She said that getting up and moving around would alleviate her discomfort, but now, she no longer got relief from moving around. Appellant did not believe that her back problems were related to her 1997/1998 motor vehicle accident. She said that, since September 7, 2003, she has been unable to work due to her back problems.

Dr. James Adametz testified that, in 1997/1998, he first treated appellant for cervical spine problems. He said that, since 1997, appellant has had some type of problems with her neck and low back. Dr. Adametz testified that, following a 1997 motor-vehicle accident, appellant complained of neck and low back problems. He said that he had treated appellant for both her neck problems and her low back problems. He explained that he never put any restrictions on appellant for her original low back problems; however, he now thinks she should have some permanent restrictions including a lifting restriction.

Dr. Adametz testified that, in a report dated January 13, 1998, he noted that appellant had an abnormality at C4-5. He described it as a small bone spur at C4-5 and some degenerative changes in the disk. A February 11, 1998, MRI revealed a minimal bulge and osteophyte spur at C4-5. He said that, on March 4, 1998, appellant underwent neck surgery at C5-6 and that she was released on May 29, 1998.

Dr. Adametz stated that he treated appellant again on September 29, 1998. He said that, at that time, appellant's neck was doing well but that she was complaining of problems with her back. He stated that, in a report dated October 23, 2001, he indicated that appellant's neck was not bothering her too much. He said that, in the report, he noted that appellant complained that her low back was bothering her more, so he prescribed epidural steroid injections.

Dr. Adametz said that, up until April 2002, appellant was doing fine. He said that, following her April 25 fall, he first treated appellant on May 22, 2002. During her visit, appellant indicated that her neck was worse. She also said that she was having some shoulder pain with tingling in her arms. Dr. Adametz testified that appellant also informed him that her low back was bothering her a lot more than it had in the past and that she was having pain in both her hips and legs. A May 28 MRI of appellant's lumbar spine revealed abnormalities of the superior end plate of the body of S-1. Dr. Adametz testified that, at first, he was concerned that there might be some abnormality such as a fracture, tumor, or infection, but that it turned out to be nothing.

Dr. Adametz testified that, in a report dated June 26, 2002, he noted that there was a marked diffused bulge and spur in the C4-5 area. He said that this was the same bulge and spur that were present on the February 1998 MRI. Dr. Adametz explained that a bulge can be degenerative in nature as opposed to being specifically traumatic in nature. He said that, since the 1998 MRI, the bulge had gotten worse. He said that he diagnosed appellant as

having spondylosis and performed surgery in September 2002. Dr. Adametz stated that appellant's degenerative condition and the presence of the bone spur prompted his decision to perform surgery. He said that following the surgery appellant was unable to work.

Dr. Adametz stated that, in October 2002, he opined that appellant's problems were an aggravation of a "pre-existing illness." He believed that the aggravation also led to the need for surgery. He opined that, on April 25, appellant sustained a sacroiliac sprain. He explained that, with this type of sprain, he does not assign a permanent-impairment rating. Dr. Adametz testified that he had not assigned appellant a permanent-impairment rating for her low back because he did not find any "objective and measurable findings" that would justify a rating of appellant's low back. He said that for appellant's neck injury he assigned a five percent impairment and that, when combined with appellant's previous rating, she had a total impairment of thirteen percent. Dr. Adametz testified that, as of April 7, 2003, appellant had reached MMI.

Dr. Adametz testified that the only proof he had that the April 25 fall caused appellant's neck injury was that her MRI scan looked worse than it did in 1998. He further stated:

With regard to the MRI being different from the 2001 MRI, if she had walked in and said, nothing happened, it just feels worse, I would say, well, it is just kind of worn out and gotten worse over time. The catch is that she had a change in her symptoms and so I can only tell you by what she told me. It got worse at that point. I thought the films were worse, so I tend to correlate the two. That is the only way I really have to date it and give you cause and effect.

Dr. Ralph Joseph, III, testified that appellant's medical records indicate that in 1997,

appellant first presented in the clinic with problems related to her neck and back. Appellant's files indicated that she had a motor-vehicle accident, and that, thereafter, she began experiencing pain in her neck. Dr. Joseph said that, because a disk herniation was suspected, appellant was referred to Dr. Adametz for treatment. He said that, in 1998, appellant indicated that she was having low back problems that were the result of a fall. He also said that, at that time, appellant was having some "left leg difficulties."

Dr. Joseph stated that appellant's records also indicated that, in April 2001, appellant complained of pain in her shoulders and arms. He said that a scan revealed a disk bulge at L4-5 that was causing some cord compression. He said that, on August 31, 2001, appellant had a second motor-vehicle accident. He testified that, in April 2002, appellant complained of neck and lower back pain. Dr. Joseph said that, at that time, appellant was treated by his brother, Dr. William Joseph, who felt that appellant was experiencing tenderness in the SI joint region. He said that in appellant's records there was no mention of her April 25 fall. He explained that for the past five years appellant had been bothered by neck and lower back problems.

Dr. Joseph acknowledged that, in a letter dated October 1, 2002, he indicated that appellant had prior cervical disk surgeries and that a MRI in 1997 revealed moderate to severe degenerative changes. He said that, when he treated appellant in June 2003, appellant had back problems and SI joint problems. He explained that, at that time, appellant had a disk bulge at L5-S1 that accounted for her posterior leg and hip pain. Dr. Joseph further

explained that “[i]t’s almost assumed you have degenerative joint disease if you have ruptured disks because unless it’s totally traumatic it’s a wear and tear event that’s then exacerbated by a fall or injury. It’s hard to get a ruptured disk with a single injury.” He testified that a person can have low back pain and posterior leg pain from a bulging disk or from SI joint dysfunction.

Dr. Joseph opined that appellant’s April 25 fall brought on new symptoms. However, he could not say one way or the other if appellant’s pain was a continuing problem or not. He also could not say whether appellant’s 1997 injury had completely resolved.

Dr. Wesley Brent Sprinkle testified that he began treating appellant on September 23, 2003. He said that she was complaining of pain in her low back area, the left side of her hip, and her left leg. He said that appellant’s past history indicated that she had undergone two discectomies at C4 and C5-6. He did not recall appellant ever relating anything about previous problems or a lack of previous problems involving her low back and/or her left leg. Dr. Sprinkle stated that appellant informed him that her problems had been present since April 2002.

Dr. Sprinkle testified that he was unaware of the fact that appellant had two prior auto accidents and a fall. He opined that:

If she had problems in her low back in 1997, 1998, and 1999 I think I would still be able to say that greater than 51% of her symptoms would be related to that fall. That is what I wrote. I could still say that if the facts show that she had problems in 1997, 1998, and 1999 if those symptoms had resolved between 1999 and 2002. It’s difficult to say how long symptoms would have to resolve before they would not be related to something that happened before the fall of 2002, but if there is at least a six-month

window of symptom resolution. I would be a little more comfortable. If Dr. Joseph indicated that he was not sure that they ever went away, that would affect my opinion. If those symptoms were there, there's a reasonable evidence [sic] to indicate that that's the case, then it would be much more difficult to conclude that the fall in 2002 caused those symptoms.

He said that, based upon the indication that appellant's symptoms were present prior to her April 25 fall, he would conclude that his opinion about the percentage chance that the April 25 fall produced those symptoms would be different.

During his testimony, Dr. Sprinkle stated:

It becomes much more difficult to draw a conclusion that 51% or more of her symptoms were caused by something that occurred in April of 2002 if Dr. Adametz's records indicated that her problems were existing in August of 1999 and in October of 2001 she had some sensation decrease in the left lateral part of a leg and around the knee. I would not be able to tell an [ALJ] within a reasonable degree of medical certainty. If she had those symptoms that recent, it would be more difficult. I would downgrade the chances of probability to possibility.

Dr. Sprinkle further said that, if appellant had these problems from 1997 through 2001 up to about five months before her April 25 fall, he could not say that the major cause of appellant's need for treatment when he treated her in September 2003, was the result of something that happened on April 25. He explained that, if the problems were pre-existing, he was unable to conclude that the April 25 fall caused appellant's current problems. Dr. Sprinkle could only conclude that the April 25 fall made appellant's problems worse.

Dr. Sprinkle explained that lumbar disk degeneration could be a contributing factor to appellant's complaints of pain. He stated that knowing that appellant had prior complaints of neck and low back pain was helpful but did not affect his prior opinions significantly

because symptoms in the low back are “really not very specific as to location.” He said that, if at first, it was just low back pain and now appellant has more posterior hip and leg pain, to him the symptoms are different.

The ALJ found that appellant had proven the following: (1) that as a result of her compensable neck injury she was entitled to additional temporary-total-disability benefits from September 9, 2002, through October 20, 2002; (2) that appellant suffered a compensable injury to her left hip and left leg and was therefore entitled to reasonably necessary medical benefits and temporary-total-disability benefits from September 6, 2003, until a date yet to be determined; (3) that appellant was entitled to an award of attorney’s fees for all controverted benefits. Appellees appealed the decision to the full Commission.

The Commission reversed the decision of the ALJ. The Commission specifically found the following. First, appellant’s left hip and leg problems were related to a pre-existing condition that was either of independent etiology or as a result of some pre-existing low back condition. Second, that a preponderance of the evidence indicated that the appellant’s low back problems were pre-existing and “more likely than not” the result of a degenerative condition and “probably exacerbated by some type of non-work related incident[.]” Third, that appellant failed to prove by a preponderance of the evidence that, as a result of her neck injury, she was totally incapacitated from earning wages during the time for which additional benefits were awarded. Lastly, the Commission found that appellant failed to present evidence that she was within her healing period concerning her neck injury.

From that decision, appellant now brings this appeal.

In reviewing decisions from the Workers' Compensation Commission, the appellate court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Lee v. Alcoa Extrusion*, __ Ark. App. __, __ S.W.3d __ (Jan. 26, 2005). Substantial evidence exists if reasonable minds could reach the same conclusion as the Commission. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Logan County v. McDonald*, __ Ark. App. __, __ S.W.3d __ (Apr. 6, 2005). When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires us to affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Lee v. Alcoa, supra*.

In her first argument on appeal, appellant argues that "there is no substantial evidence to support the Commission's reversal of the [ALJ's] decision denying and dismissing the claim in its entirety with reference to . . . [the] failure to assess an attorney's fee to the appellant's attorney in spite of a stipulation thereto." At the start of the hearing before the ALJ, appellees acknowledged that an attorney's fee was owed, and the parties stipulated that such a fee was owed. In their responsive argument, appellees state "[a]ppellees admit that they are still bound by said stipulation and intend on paying the stipulated attorney's fees as

soon as this claim is finally adjudicated.” However, a review of the Commission’s opinion reveals that the Commission did not address the issue of attorney’s fees. It is well settled that we do not address arguments that were not addressed by the Commission. *See Johnson v. Bonds Fertilizer, Inc.*, __ Ark. __, __ S.W.3d __ (Feb. 2, 2006).

Appellant next argues that the Commission erred when it reversed the ALJ’s award of benefits for her SI joint problems. In order to recover benefits for her SI joint problem, appellant had the burden of proving that her SI joint problems were a compensable injury. A compensable injury is defined as an accidental injury arising out of and in the course of employment. *McKinney v. Trane Co.*, 84 Ark. App. 424, 143 S.W.3d 581 (2004); Ark. Code Ann. § 11-9-102(4)(a) (Supp. 2005). In order to prove a compensable injury a claimant must prove, among other things, a causal relationship between the injury and the employment. *Horticare Landscape Mgmt. v. McDonald*, 80 Ark. App. 45, 89 S.W.3d 375 (2002). Objective medical evidence is necessary to establish the existence and extent of an injury but not essential to establish the causal relationship between the injury and a work-related accident. *Id.* Objective medical evidence is not essential to establish the causal relationship between the injury and a work-related accident where objective medical evidence establishes the existence and extent of the injury, and a preponderance of other nonmedical evidence establishes a causal relationship to a work-related incident. *Id.*

In its opinion denying benefits, the Commission wrote that it found appellant’s SI joint problems were “related to some pre-existing condition, either of independent etiology

or as a result of some pre-existing low back pathology.” The testimony of the treating physicians supports the Commission’s findings. Drs. Adametz and Joseph testified that appellant was experiencing problems with her SI joint prior to her April 25 fall. Dr. Sprinkle was unaware of appellant’s prior problems and unable to offer an opinion as to causation. The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). When we view the evidence in a light most favorable to the Commission’s findings, we cannot say that fair-minded persons, when confronted with the same evidence as the Commission, would not have found that appellant’s problems were related to some type of pre-existing condition.

Furthermore, the Commission gave little credence to Dr. Adametz’s opinion that the April 25 fall aggravated appellant’s preexisting condition. An aggravation is a new injury resulting from an independent incident. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Being a new injury with an independent cause, an aggravation must meet the requirements for a compensable injury. *Id.*

In the case at bar, appellant is unable to establish the causal link that is necessary to prove a compensable injury. Therefore, she is unable to establish that her SI joint problems were either a compensable injury standing alone or the result of an aggravation.

In her last argument on appeal, appellant argues that the Commission erred when it reversed the ALJ’s decision awarding her a five percent permanent impairment. Appellant fails to cite authority in support of her argument. We will not consider a point raised on

appeal where the appellant fails to cite authority. *See Gwin v. Daniels*, 357 Ark. 623, 184 S.W.3d 28 (2004).

Affirmed.

GLADWIN and GRIFFEN, JJ., agree.